



Comptroller General
of the United States

Washington, D.C. 20548

Morrow
1457215

Decision

Matter of: Northwestern Motor Co., Inc.

File: B-244334

Date: September 16, 1991

George A. Konecny for the protester.
John R. McCaw, Esq., Federal Aviation Administration, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Procuring agency properly rejected bid on a sealed bid procurement as nonresponsive where a handwritten notation on the protester's bid reasonably may be interpreted as taking exception to the material solicitation requirement that hydrostatic steering be supplied.

DECISION

Northwestern Motor Co., Inc. protests the award of a contract to Medley Material Handling, Inc., under invitation for bids (IFB) No. DTFA02-91-B-00062, issued by the Federal Aviation Administration (FAA), for two gasoline powered aircraft tow tractors. Northwestern contends that FAA improperly determined its lower-priced bid to be nonresponsive.

We deny the protest.

On April 4, 1991, FAA issued this solicitation for two gasoline powered aircraft tow tractors with full time hydrostatic type power steering. At bid opening, on May 5, Northwestern was the apparent low bidder; however, marked next to the IFB's specification requiring hydrostatic steering, Northwestern hand wrote "[w]e will provide full time power steering - hydraulic type, i.e., with a power steering pump." Northwestern also submitted descriptive literature with its bid stating that its product was equipped with "hydraulic assisted recirculating ball type steering gear." Because of the notation and literature, FAA determined Northwestern's bid took exception to the steering requirement and rejected Northwestern's bid as nonresponsive. On May 29, after rejecting the second low bidder as nonresponsive, FAA made award to Medley Material Handling, Inc.

Northwestern does not dispute that hydrostatic steering was a material requirement. Instead, Northwestern contends that the handwritten note did not take exception to the requirement for hydrostatic type steering, but informed FAA of the type of hydrostatic equipment Northwestern would provide to meet the requirement. Northwestern maintains that it intended to provide tractors with optional hydrostatic steering systems and has submitted detailed engineering drawings of the steering system.

To be responsive, a bid must represent an unequivocal offer to provide the exact thing called for in the IFB such that acceptance of the bid will bind the contractor in accordance with the solicitation's material terms and conditions at the time of bid opening. Auto-X Inc., B-241302.2, Feb. 6, 1991, 91-1 CPD ¶ 122. Responsiveness is determined at the time of bid opening from the face of the bid documents. Where a bidder provides information with its bid that reduces, limits, or modifies a solicitation requirement, the bid must be rejected as nonresponsive. Id.

Viewing the notation in the most positive light, Northwestern's bid was ambiguous with regard to the provision of hydrostatic steering. Where a bid is ambiguous with respect to a material requirement, i.e., is subject to two reasonable interpretations, and under one of the interpretations the bid is nonresponsive, the bid must be rejected as nonresponsive. See Achievement Prods., Inc., B-224940, Feb. 6, 1987, 87-1 CPD ¶ 132.

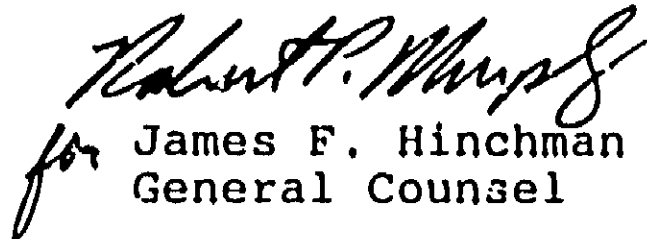
While Northwestern argues that the note was to inform FAA of the type of hydrostatic steering system employed in the tractor, we think that it was just as reasonable to conclude from Northwestern's notation and literature that Northwestern may not be offering a hydrostatic power steering system. Even though both hydraulic and hydrostatic steering systems operate with hydraulics, FAA reports that the systems differ in that an ordinary hydraulic system uses a direct mechanical linkage between the steering wheels and tires, while in a hydrostatic system the mechanical linkage is replaced by hydraulic lines. FAA reports that the hydrostatic system, because of this difference, is easier to maintain. In view of the foregoing, we find that the notation on Northwestern's bid created an ambiguity regarding Northwestern's commitment to meet the hydrostatic power steering requirement.

A nonresponsive bid cannot be accepted even if it is the lowest received, since to accept the bid would compromise the integrity of the system. See Trail Equip. Co., B-241004.2, Feb. 1, 1991, 91-1 CPD ¶ 102. It is irrelevant that Northwestern's engineering drawings, submitted in support of

its protest, reflect what may be a hydrostatic steering system because the bid itself did not establish this to be the case. In a sealed bid procurement such as this, a bidder is not permitted to clarify information contained in its bid after bid opening, which affects a material requirement, Marco Equip., Inc; Sci. Supply Co., B-241329; B-241329.2, Jan. 31, 1991, 70 Comp. Gen. ___, 91-1 CPD ¶ 107. Therefore, FAA properly rejected Northwestern's bid as nonresponsive.

Northwestern also protests that Medley's bid was nonresponsive since its submitted descriptive literature did not indicate it met the IFB requirement for power brakes on all four wheels. While it is true that Medley submitted descriptive literature with its bid, that literature did not take exception to the IFB power brake requirement. Under the section entitled "Brakes," Medley's descriptive literature states that Medley's tractor is equipped with "4-wheel, power assisted hydraulic brakes." Thus, Medley's bid was properly found responsive.

The protest is denied.


for James F. Hinchman
General Counsel